

### **REMARKS/ARGUMENTS**

This Amendment is in response to the Office Action mailed August 13, 2004. In the Office Action, claims 1-17 were rejected under 35 U.S.C. § 103. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

#### ***Rejection Under 35 U.S.C. § 103***

Claims 1-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lowry, a publication entitled "Object Code Optimization," in view of Chang, a publication entitled "Using Profile Information to Assist Classic Code Optimizations." Applicant respectfully traverses the rejection.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143, p.2100, 124(8<sup>th</sup> Ed., rev.1, Feb 2003); see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, the first and third criterions have not been established.

First, neither Lowry nor Chang, alone or in combination, describes the application of tail duplication to separate reusable instructions after selection of initial regions. Emphasis added. In fact, the tail duplication of Chang appears to be designed for trace creation, not separation of reusable instructions as claimed. *See tail-duplication algorithm at Figure 4 of Chang.*

Second, neither Lowry nor Chang, alone or in combination, describes selecting initial regions based on completion probabilities. The Office Action states that Lowry describes the selection of initial regions based on the wording that the "program is broken into computational 'blocks'". *See Page 4 of the Office Action.* The breakdown of the program into computational blocks does not describe or suggest the selection of initial regions based on completion probabilities as claimed.

Moreover, the setting of the fetched operand set forth on page 20 (Right column, lines 20-30) do not describe or even suggest a representation of the number of upward/downward exposed registers. Rather, this setting indicates whether the operand must be fetched and whether it is retained. Reconsideration of this limitation is respectfully requested.

In light of the foregoing, Applicant respectfully requests the Examiner to withdraw the outstanding §103(a) rejection.

***Conclusion***

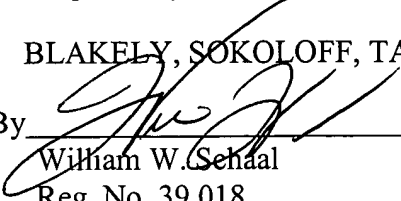
Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: November 12, 2004

By

  
William W. Schaal

Reg. No. 39,018

Tel.: (714) 557-3800 (Pacific Coast)

**Attachments**

12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, California 90025

---

**CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8A)**

*I hereby certify that this correspondence is, on the date shown below, being:*

**MAILING**

**FACSIMILE**

☒ deposited with the United States Postal Service  
as first class mail in an envelope addressed to:  
Commissioner for Patents, PO Box 1450,  
Alexandria, VA 22313-1450.

☐ transmitted by facsimile to the Patent and  
Trademark Office.

Date: 11/12/2004

  
Susan McFarlane

11/12/2004

Date

Appl. No..09/965757  
Amdt. Dated 11/12/2004  
Reply to Office Action of August 13, 2004

**Amendments to the Drawings:**

The attached replacement sheets of drawings include Figs. 1-5B.

Attachment:        Replacement Drawing Sheets



Appl. No. 09/965757  
Amdt. Dated 11/12/2004  
Reply to Office action of August 13, 2004  
Replacement Sheet  
**APPENDIX**

Replacement Sheets for Figures 1-5B

**THIS PAGE BLANK (USPTO)**



Appl. No. 09/965757  
Amdt. Dated 11/12/2004  
Reply to Office action of August 13, 2004  
Annotated Sheet Showing Changes

Figure showing changes

**THIS PAGE BLANK (USPTO)**